IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3724 OF 2004

Safiq Ahmed Habibulla (now deceased)
Yasim d/o. Safiq Ahmed Habibullah
& Ors. : Petitioners
(Orig.Defts.)

V/s.

Haji Abdul Rashid Mohammed Sharfuddin : Respondent
(Orig. Plaintiff)

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Mr.S.D.Patil i/b. Mr.Vikas Mahangre for the petitioners.
Mr.S.S.Redekar for the respondent.

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CORAM : S.A.BOBDE, J.

DATE : JULY 27, 2007.

P.C.

1. Rule, returnable forthwith.
Mr.Redekar waives service for the respondent.
Heard by consent.

2. The petitioner-tenant has challenged the decree of eviction passed by the lower appellate Court against him. The Courts below have found that the petitioner no.1 has illegally sub-let the premises to the petitioner no.2.

3. The learned counsel for the petitioners pointed out that in the plaint, the respondent has averred that the petitioner no.1 has illegally sub-let the premises on leave and licence to the petitioner no.2. In contradiction to the averments, the respondent has deposed before the Court that the petitioner no.2 has trespassed into the premises. This apparent contradiction has not been considered by the Courts below while decreeing the suit of the respondent. The decree of the Court below thus suffers from an error of law apparent on the face of the record.

4. The decree of the lower appellate Court is, therefore, set aside. The matter is remanded back to the learned appellate Court who shall proceed to decide the matter afresh, in accordance with law. All questions of both the parties are left open.

5. The rule is made absolute in the above terms.

S.A. BOBDE, J.